

11735

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

NAVISION SHIPPING COMPANY A/S,

Plaintiff,

Case No. 07 CIV 9905

JUDGE McMAHON

- against -

VERIFIED COMPLAINT

OSL STEAM-SHIP CORP.,

Defendant.

-----X

Plaintiff, **NAVISION SHIPPING COMPANY A/S**, (hereinafter “**NAVISION**”),

by its attorneys, **JUNGE & MELE, LLP**, complaining of the Defendant, **OSL STEAM-**

SHIP CORP., (hereinafter “**OSL**”), states and alleges the following upon information

and belief:

1. This is a case of admiralty jurisdiction pursuant to 28 U.S.C. § 1333(1) and a maritime claim within the meaning of Rules 9(h) and 38(e) of the Federal Rules of Civil Procedure.

2. At all times relevant, Plaintiff, **NAVISION**, was a foreign business corporation with a place of business located at Strandvejen 102 E, 2900 Hellerup, Denmark.

3. At all times relevant, Defendant, **OSL**, was foreign business corporation, with a place of business located at Room 10-1404, Boshan Gongyu, No. 173 Boshan Dong Road, Shanghai, 200136, P.R. China, and is not present within this District, or any nearby district, pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

4. By a charter party dated June 19, 2006, the vessel, *OCEAN PEARL* (the “Vessel”), was chartered by its head owners, **BHP Billiton Marketing AG** (the “**Head Owners**”), to Plaintiff, **Naviston** (the “**Disponent Owner**”) for a time charter period of two (2) months to about four (4) months, on terms and conditions set forth in the charter party.

5. By charter party dated August 9, 2006, the Vessel was sub-chartered by Plaintiff, **Navision**, the **Disponent Owner**, to Defendant, **OSL** (the “**Time Charterer**”), for a duration of about 65 to 75 days, without guarantee, at a rate of hire of \$16,500 per day, on the same “back-to-back” terms as the charter party with Head Owners dated June 19, 2006, including a charterer’s responsibility clause for all damages caused by its stevedores, a London arbitration/mediation clause, and other terms, with “logical alterations”; the fixture “Recap” message evidencing the material terms of the sub-charter between Plaintiff and Defendant is annexed hereto as **Exhibit “1.”**

6. Thereafter, Defendant, **OSL**, employed said vessel in ocean commerce; however, on two separate occasions between August 20 and 22, 2006, during a voyage calling for cargo operations at Getma, Gabon, stevedores employed and controlled by Defendant caused damage to the Vessel; a true copy of the incident reports/messages issued by the vessel’s Master, on behalf of Head Owners, to Plaintiff and Defendant are annexed hereto as **Exhibit “2.”**

7. Head Owners commenced arbitration in London against Plaintiff, the Disponent Owner, for the damages caused by Defendant’s stevedores during the period of the sub-

charter; the sole arbitrator accepted the damages noted in the Master's incident reports/messages as stevedore damage within the meaning of the head charter, and therefore, rendered an award in favor of Head Owners and against Plaintiff as follows: costs of repairing stevedore damage in the amount of \$27,106.00; recoverable costs in the sum of £2,500.00, in addition to the Head Owners' claim fee of £1,875.00; on or about September 13, 2007, Plaintiff's insurer remitted the above funds to Head Owner as evidenced by the true copies of the bank advices annexed hereto as **Exhibit "3."**

8. Under the terms of the governing charter party between Plaintiff and Defendant, disputes between them are to resolved in arbitration/mediation in London. In that arbitration Plaintiff expects to recover the amount of \$60,000.00, calculated as follows: on the principal claim for stevedore damage caused by Defendant's stevedore for which Plaintiff was required in the first instance to indemnify the Head Owners under aforesaid arbitration award, the amount of approximately \$40,000.00; Plaintiff's defense costs in the arbitration with Head Owners of about \$10,000.00; costs and accrued interest on the award in London arbitration with Defendant in the amount of about \$10,000.00; as best as same can now be estimated.

9. Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but Defendant is believed to have or will have during the pendency of this action, assets within this District consisting of cash, funds, freight, hire, or credits including but not limited to electronic fund transfers in the hands of garnishees in this

District, including but not limited to the following:

1. Bank of China
2. HSBC (USA) Bank
3. Bank of New York Mellon
4. Barclay's Bank
5. JPMorgan Chase Bank
6. Wachovia Bank
7. Bank of America, N.A.
8. American Express Bank
9. Citibank, N.A.
10. Standard Chartered Bank
11. UBS, A.G.
12. BNP Paribas
13. Calyon Bank
14. Bank of Commerce
15. Deutsche Bank

WHEREFORE, Plaintiff prays for the following relief:

1. That process in due form of law according to the practice of this Court be issued against Defendant and that Defendant be cited to appear and answer the allegations herein;

2. That, since Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all of the Defendant's tangible or intangible property or any other funds held by garnishees including but not limited to the aforementioned garnishees in the District which are due and owing or otherwise the property of Defendant up to the amount of \$60,000.00, to secure Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in this Verified Complaint.

3. That such property attached pursuant to the Process of Maritime Attachment and Garnishment remain sequestered to serve as security for the payment of Plaintiff's claims as they may be embodied in any award issued out of arbitration in London.

4. That Plaintiff have Judgment against Defendant for any of its property attached in this District up to an amount of \$60,000.00, and that said property be condemned to satisfy any such Judgment; and

5. That Plaintiff have such other and further and different relief as may be just and proper, including judgment against Defendant, along with interest, costs and disbursements as allowable under law.

Dated in the City of New York on November 8, 2007

Respectfully submitted,

JUNGE & MELE, LLP
Attorneys for Plaintiff

/S/ PETER A. JUNGE

Peter A. Junge (PJ-0745)
29 Broadway
New York, NY 10006
(212) 269-0061

VERIFICATION

PETER A. JUNGЕ declares as follows:

1. I am a member of the bar of this Honorable Court and of the firm of Junge & Mele, LLP, attorneys for Plaintiff.
2. I have read the foregoing Complaint and I believe the contents thereof are true.
3. The reason this Verification is made by deponent and not be Plaintiff is that Plaintiff is a foreign corporation, no officers or directors of whom are within this jurisdiction.
4. The sources of my information and belief are documents provided to me and statements made to me by Plaintiff.
5. I declare under penalty of perjury that the foregoing is true and correct.

Dated in the City of New York on November 8, 2007

/S/ PETER A. JUNGЕ

Peter A. Junge

EXHIBIT “1”

Kim Steffensen

From: Navision Operation Dept [operation@navisiongroup.com]
Sent: Thu 13 Sep 2007 10:46
To: BM CPH Syndicate2
Subject: M/V OCEAN PEARL - C/p dated 19 June - Claim for stevedore damage to vessel - Our ref. 40036909.

BM CPH Syndicate2

Ref: 070913-SH9944.

TO : SKULD SYN 2 - ATT. KIM STEFFENSEN

RE : MV OCEAN PEARL - YR REF 40036909

--

AS REQUESTED PLS FIND :

- RECAP

REF: 060810-KV9785 - KLAUS VOLDMESTER - DIR: +45 3977 1188 - MOB: +45 2073 3344.

STEVEN/KLAUS

RE MV OCEAN PEARL / OSL STEAM-SHIP CORP

- PLEASED TO RECAP CLEAN FIXTURE C/P DATED 09TH AUGUST 2006 AS FOLLOWS:

- ACCT OSL STEAM-SHIP CORP WHICH WAS GUARANTEED BY T & O SHAI

- NEGOS AND EVENTUAL FIXTURE TO REMAIN STRICTLY P+C

- MV OCEAN PEARL (AS DESCR IN C/P)

FOR

- DEL DLOSP LAGOS ATDN SHINC

- L/CAN 10/17 AUGUST 2006

(ETC/S LAGOS 12TH AUG WP/AGW/UCB)

- TCT WITH LOGS VIA SP(S)/SB(S)/SA(S) AA AWIWL VIA WEST AFRICA TO CHINA

- DURATION ABT 65/75 DAYS WOG

- REDEL DLOSP 1SP CHINA

- HIRE USD 16,500,- DAILY INCL OT

- BUNKERS ABT 400/500 MTS IFO AND ABT 40/60 TS MDO. PRICES USD 415 PMT IFO AND ABT USD 680 PMT MDO. SAME PRICES/QTIES BENDS. OWNS OPTION TO BUNKER VESSEL AT LOAD/DISCHPORTS OR ENROUTE. SAME NOT TO INTERFERE WITH CHARTERERS CARGO OPERATIONS.

- GTEE LETTER TO BE PUT INTO A SEPERATED ADDENDUM WHICH TO BE STRICKLY P & C

- COMMS 2.5 ADR

- OWISE ALL FURTHER T/D/C BASIS OWNERS B-T-B PROFORMA C/P WITH AMENDMENTS AS PER MAIN TERMS AND LOGICAL ALTERATIONS.

END !!!

"1"

REVERTING SHORTLY WITH COMMENTS TO QUESTIONNAIRE

BEST REGARDS
KLAUS VOLDMESTER
NAVISON CHARTERING A/S
-- AS AGENTS ONLY --

DIR: +45 3977 1188 - MOB: +45 2073 3344

- FULL STYLE OSL :

OSL STEAMSHIP CORP
SHANGHAI AGENCY ADDRESS:
ROOM10-1404, BOSHAN CONGYU,
NO.173 BOSHAN DONG ROAD, SHANGHAI, PRC
ZIP CODE 200136
PIC: PETER LEE
T: 00 86 21 58500309
F: 00 86 21 23019901
E-M: OPS@OSL-STEAMSHIP.COM

BRGDS/STEEN HANSEN
NAVISON CHARTERING A/S
-- AS AGENTS ONLY --

DIR: +45 3977 1190 - AOH: +45 3940 5026 - MOB: +45 2637 1540
E-MAIL: OPERATION@NAVIONGROUP.COM

<----- Original Message ----->

From: BM CPH Syndicate2 <syn2.cph@skuld.com>

To: Operation Detp <operation@navisiongroup.com>;

Received: 13-09-2007 10:29:04

Subject: [SH] M/V OCEAN PEARL - C/p dated 19 June - Claim for stevedore damage to vessel - Our ref. 40036909.

>

>Confidentiality: This e-mail is intended for the person(s) named above. It may contain information that is confidential or legally privileged.

>If received in error, please delete it from your system and notify sender.

>

EXHIBIT “2”

Kim Steffensen

From: Navision Operation Dept [operation@navisiongroup.com]
Sent: Wed03. Oct 2007 16:31
To: BM CPH DSDA
Subject: M/V OCEAN PEARL - C/p dated 9 August - Stevedore damage - Our ref. 40036909

BM CPH DSDA

Ref: 071003-SII0129.

ATT : KIM STEFFENSEN

M/V OCEAN PEARL - C/P DATED 9 AUGUST - STEVEDORE DAMAGE - YR REF. 40036909

BELOW PLEASE FIND 2 STEVEDORE DAMAGE REPORTS SUBMITTED TO CHARTERERS:

QQ

Ref: 060822-SII5152.

OPR / STEEN

RE : OCEAN PEARL / OSL

--

Regretfully we must formally hold Charts responsible for all costs and consequences which may arise as a result of the damage as detailed below.

QQ

-----Original Message-----

From: Master oceanpearl [mailto:masteroceanpearl@navisiongroup.com]

Sent: Sunday, August 20, 2006 11:23 PM
To: Nicodeme Kolo
Cc: Centurian Mar/Ops; Handy Atlantic Operations; Navision Ops Dept
Denmark; OSL
Subject: Notice of Damage

From : Ocean Pearl
Port : Owendo Anchorage
Date/Time : 20 August 2006 / 1000 hrs LT

To : Cargo Shippers / Barge # 18
Messrs. GETMA Stevedoring Company
GETMA, GABON

Dear Sirs,

I beg to advice that, on the above date, you damaged my ship's hull as specified below and I hereby notify that you are responsible thereof and that, cost of repair will be billed against you.

"2"

Damaged consists of :

Dented / push end hull in between frame no. 75 - 80 starboard side
about 7.0 meters above the keel.

Approx. damaged : length 1.0 mtrs. width 50 cm, deep 4 cm.

Damage was caused as follows :

Hard impact by logs from the barge # 18.

Note : Notice of Damage form was sent thru Stevedores Foreman
(night shift) this date for your receipt / acknowledgement.

Yours faithfully,

Capt. Mateo Alorro Jr.
Master

QQ

BRGDS/STEEN HANSEN
NAVISION CHARTERING A/S
-- AS AGENTS ONLY --

DIR: +45 3977 1190 - AOII: +45 3940 5026 - MOB: +45 2637 1540

QQ

+

QQ

Ref: 060822-SH5156.

OPR / STEEN

RE : OCEAN PEARL / OSL

--

Regretfully we must formally hold Charts responsible for all costs and
consequences which may arise as a result of the damage as detailed
below.

QQ

From : M.V. Ocean Pearl

To : Cargo Shippers / Barge Plate no. 5
Messrs. GETMA Stevedoring Company
GETMA, Gabon

and

To Whom It May Concern,

Dear Sirs,

I beg to advice that, on the above date, you damage my ship's hull
as specified below and hereby notify that you are responsible
thereof and that, cost of repair will be billed against you.

Damaged consist of :

Dented & push end in bulbous bow, in between frame no.205 to

210 starboard side 5.5 meter above the keel.
Approx. damaged : length 80 cms, width 70 cms, deep 5 cms.

Damaged was caused as follows :
Hard impact from the Barge plate 3 and pushing tug name "Conbe L2558" while maneuvering alongside the ship.

Note : Notice of Damage form was sent thru Stevedores Foreman
(day shift) this day 22 August 2006 / 0940 hrs I.T for your
receipt / acknowledgement.

Yours faithfully,

Capt. Mateo Alorro Jr.
Master

QQ

BRGDS/STEEN HANSEN
NAVISION CHARTERING A/S
-- AS AGENTS ONLY --

DIR: +45 3977 1190 - AOII: +45 3940 5026 - MOB: +45 2637 1540

QQ

BRGDS/STEEN HANSEN
NAVISION CHARTERING A/S
-- AS AGENTS ONLY --

DIR: +45 3977 1190 - AOII: +45 3940 5026 - MOB: +45 2637 1540
E-MAIL : OPERATION@NAVISIONGROUP.COM

<----- Original Message ----->

From: BM CPH DSDA <ddc@skuld.com>
To: Navision Operation Dept <operation@navisiongroup.com>;
Received: 03-10-2007 16:11:49
Subject: [SH] RE: Re: M/V OCEAN PEARL - C/p dated 9 August - Stevedore damage - Our ref. 40036909

>To: Navision Chartering A/S
>Attn: Steen Hansen
>
>M/V OCEAN PEARL - C/p dated 9 August - Stevedore damage - Our ref. 40036909.
>
>Thanks for the mail.
>
>The fact that all stevedore reports/notices were passed on to sub-charterers is very good news in deed.
>
>Please forward all evidence in support of the above to us and I will attach that to the letter to Charterers P&I Club.
>
>Regarding the survey reports, we will just have to leave the matter open for now and wait to see what the Charterers P&I Club have to say.
>
>Best regards
>Danish Defence Club
>Kim Steffensen
>
>Direct: +45 33 43 34 18
>Fax: +45 33 32 12 05
>www.danishdefenceclub.com
>
>From: Navision Operation Dept [mailto:operation@navisiongroup.com]

EXHIBIT “3”

ASSURANCEFORENINGEN SKULD
ATT. BACKOFFICE
POSTBOKS 1376 VIKÅ
N-0114 OSLO

BUSINESS DATE 13-09-07
MTRN 07091323044
CUSTOMER NO 938419531
ACCOUNT NO 9750.04.92612

DEBIT ADVICE

WE CONFIRM HAVING DEBITED YOUR ACCOUNT VALUE 13-09-07
USD 28 686.88 IN ACCORDANCE WITH YOUR INSTRUCTIONS.

AMOUNT : USD 28 686.88
TRANSFER TO : BHP BILLITON MARKETING AG
BAAR
SWITZERLAND
ACCOUNT NO : GB38BOFA16505034691049
WITH : BANK OF AMERICA N.A./LONDON
LONDON
DETAILS : 40036909 - COMP. - OCEAN PEARL

AMOUNT	: USD	28 686.88
COMMISSION	: USD	0.00
DEBIT	: USD	28 686.88

REPORTED
NORGES BANK
FREE TEXT :

PAYMENT
PURPOSE : 29

Skandinaviska Enskilda Banken

Mailing address
P.O.Box 1843 Vikå, NO-0123 Oslo
Office address
Filipstad Brygge 1

Telephone
+47 22 82 70 00
Fax
+47 22 82 71 12

Telex
19119 senoan
S.W.I.F.T.-address
ESSENOKX

Enterprise register
Skandinaviska Enskilda Banken AB (publ)
Oslo Branch
NO 971 049 944

ASSURANCEFORENINGEN SKULD
ATT. BACKOFFICE
POSTBOKS 1376 VIKA
N-0114 OSLO

BUSINESS DATE 13-09-07
MTRN 07091323030
CUSTOMER NO 938419571
ACCOUNT NO 9750.04.31176

DEBIT ADVICE

WE CONFIRM HAVING DEBITED YOUR ACCOUNT VALUE 13-09-07
GBP 4 375.00 IN ACCORDANCE WITH YOUR INSTRUCTIONS.

AMOUNT : GBP 4 375.00
TRANSFER TO : BIP BILLITON MARKETING AG
BAAR
SWITZERLAND
ACCOUNT NO : GB38BOFA16505034691049
WITH : BANK OF AMERICA N.A./NEW YORK
NEW YORK NY
DETAILS : 40036909 - COST - OCEAN PEARL

AMOUNT	: GBP	4 375.00
COMMISSION	: GBP	0.00
DEBIT	: GBP	4 375.00

REPORTED
NORGES BANK
FREE TEXT :

PAYMENT
PURPOSE : 29

Skandinaviska Enskilda Banken

<i>Mailing address</i>	<i>Telephone</i>	<i>Telex</i>	<i>Enterprise register</i>
P.O.Box 1843 Vikta, NO-0123 Oslo	+47 22 82 70 00	19119 sencoan	Skandinaviska Enskilda Banken AB (publ)
<i>Office address</i>	<i>Fax</i>	<i>S.W.I.F.T.-address</i>	<i>Oslo Branch</i>
Filipstad Brygge 1	+47 22 82 71 12	ESSENOKX	NO 971 048 944